

REMARKS

Claims 1-13 are presently pending in this application. Applicant respectfully submits that the pending claims define patentable subject matter.

I. Rejections Under 35 U.S.C. §102(b)

Claims 1-4, 6-9 and 11-13 are rejected under 35 U.S.C. §102(e) as being anticipated by newly cited Buskens, *et al.* (U.S. Patent 6,215,782; hereinafter “Buskens”).² Applicant respectfully traverses the rejection.

Claim 1 is directed to a method of managing radio links between a mobile station and a radio access network. Claim 1 requires, in part:

in the event of an interruption being detected in the radio link between said mobile station and said radio access network, suspending said radio link and attempting to reactivate said radio link for a predetermined time interval;

Buskens discloses a method for reconnecting calls in a wireless telecommunication system. The Examiner cites column 4, ll. 30-50 of Buskens, as allegedly disclosing the above-noted features of claim 1. However, Applicant respectfully submits that it is quite clear that

² Buskens was cited as a category “A” reference (document defining the general state of the art which is not considered to be of particular relevance) in the International Search Report dated March 29, 2004, in corresponding International Application No. PCT/FR2003/002830.

Buskens does not teach or suggest “suspending said radio link and attempting to reactivate said radio link for a predetermined time interval”, as recited by claim 1.

Buskens discloses the establishment of a traffic channel 131 between mobile station 135 and base station 122. See Buskens col. 4, ll. 14-18. Upon detecting an involuntary call release, the base station 122 determines whether reconnection procedures should be attempted and, if so, the base station 122 attempts to open new air traffic channels. See Buskens col. 4, ll. 3-48. If the reconnection is successful, the base station 122 uses new air interface (i.e., traffic channels) resources in the call with the mobile station 135. See col. 4, ll. 57-60.

Buskens simply discloses establishing a new radio channel, not the same radio channel. In other words, Buskens does not disclose “suspending said radio link and attempting to reactivate said radio link”, as recited by claim 1. In view of the above, Applicant respectfully submits that claim 1 would not have been anticipated by Buskens under 35 U.S.C. §102(b), because the reference does not disclose all of the features of the claimed invention. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of independent claim 1, and dependent claims 2-4.

Claims 6 and 11-13 recite features substantially the same as those discussed above with regard to claim 1, except in apparatus form, and are patentable over Buskens by similar reasoning. Accordingly, Applicant respectfully requests that the Examiner withdraw the

rejection of claims 6 and 11-13, and claims 7-9 which are patentable *at least* by virtue of their dependency.

II. Rejections Under 35 U.S.C. §103(a)

Claims 5 and 10 are rejected under 35 U.S.C. §103(a) as obvious over Buskens in view of Official Notice. Applicant respectfully traverses the rejection.

The Examiner concedes that Buskens does not teach or suggest drawing up a timetable on the basis of statistical results obtained in a communications network and relating to the durations of interruptions detected by detectors means, as recited in claims 5 and 10. However, the Examiner takes Official Notice that “a method/apparatus wherein control means (CM) are arranged to draw up said timetable on the basis of statistical results obtained in said communications network and relating to the durations of said interruptions detected by said detector means (DM), is well known in the art.” See Office Action, pg. 4. The Examiner further asserts that one of ordinary skill in the art would have been motivated to “combine the above teaching with Buskens, in order to provide service quality report for the purpose of improving the performance of the system.” *Id.*

Applicant respectfully submits that an Examiner may not rely on official or judicial notice at a point where patentable novelty is argued, but must come forward with pertinent prior art. See Ex parte Cady, 148 U.S.P.Q. 162 (Pat. Off. Bd. App. and Inter. 1965). Accordingly, Applicant

respectfully requests the Examiner to provide a pertinent reference disclosing the above-noted features.

Applicant further submits that the Examiner's alleged motivations for modifying Buskens are improper. There must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. In re Newell, 13 U.S.P.Q.2d 1248, 1250 (Fed. Cir. 1989). Here the Examiner asserts that the motivation would have been providing a "service quality report for the purpose of improving the performance of the system." Applicant respectfully submits that Buskens does not disclose the use of, or a need for, quality service reports. Applicant submits that the Examiner's conclusions could be based only on impermissible hindsight in construing the references to yield the present invention. The Court of Appeals for the Federal Circuit and the Board of Patent Appeals and Interferences have held repeatedly that such an approach is inappropriate for determining the obviousness of a claimed invention. See, e.g., In re Geiger, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987); Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1 U.S.P.Q.2d 1593 (Fed. Cir. 1987); In re Piasecki, 745 F.2d 1468, 223 U.S.P.Q. 785 (Fed. Cir. 1984); In re Gordon, 221 U.S.P.Q. 1125 (Fed. Cir. 1984); Ex parte Clapp, 227 U.S.P.Q. 972 (Pat. Off. Bd. App. and Inter. 1985); and Ex parte Shepard and Gushue, 188 U.S.P.Q. 537 (Pat. Off. Bd. App. 1974). Therefore, Applicant submits that the presently claimed invention would not have been obvious to one of ordinary skill in the art, and that the

cited references would not have taught or suggested the recitation of the structure claimed in the present application.

Applicant further submits that claims 5 and 10 are patentable *at least* by virtue of their dependency on claims 1 and 6, respectively, because the Examiner's Official Notice does not compensate for the deficiencies of Buskens. Accordingly, Applicant respectfully submits that claims 5 and 10 would not have been rendered obvious in view of Buskens because the cited reference does not teach or suggest all of the features of claims 1 and 6, and because one of ordinary skill in the art would not have been motivated to modify Buskens to produce the claimed invention. Applicant, therefore, respectfully requests that the Examiner withdraw the rejections of claims 5 and 10.

III. Conclusion

In view of the preceding remarks, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephonic interview, the Examiner is kindly requested to contact the undersigned attorney at the local telephone number listed below.

Request for Reconsideration
U.S. Application No. 10/529,912

Attorney Docket No. Q87264
Art Unit 2617

The USPTO is directed and authorized to charge all required fees (with the exception of the Issue/Publication Fees) to our Deposit Account No. 19-4880. Please also credit any over-payments to said Deposit Account.

Respectfully submitted,



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